

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

LIMITED SERVICE AGREEMENT FOR TRAFFIC DATA COLLECTION

This Agreement, made and entered into this ____ day of _____, 2007, by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter called the “State”) and **FIRM NAME** (hereinafter called the “Firm”), whose principal offices are located at **ADDRESS, CITY, STATE, ZIP**.

WITNESSETH:

WHEREAS, the State desires the assistance of private firms in the performance of certain services; and

WHEREAS, the Firm has exhibited evidence experience, ability, competence, and reputation to perform such services; and

WHEREAS, the State is authorized by North Carolina General Statute 136.28.1 to enter into an Agreement for the performance of such services;

NOW, THEREFORE, the State and the Firm, for consideration hereinafter stipulated, mutually agree as follows:

The Firm agrees to perform the required services for timely collection of traffic data for use by the State in responding to the planning, design, and evaluation of safety, operational, and traffic control issues.

All services will be performed in the United States of America. No work will be allowed to be outsourced outside of the United States of America.

ARTICLE I - SCOPE OF WORK

I.A Description of Work Required

I.A.1 Collection of various Traffic Data as follows:

- a. Vehicular turning movement and volume counts from all approaches over 8-hour, 12-hour, or 16-hour periods in 15-minute increments, including heavy vehicle volumes and pedestrian counts. Counts of 16 hours are defined as beginning at 6:00 a.m. and ending at 10:00 p.m., unless otherwise specified. Counts of 8 or 12 hours will have their beginning and ending times specified in the request. Heavy vehicles are considered vehicles with three or more axles. Heavy vehicle volumes shall be included in the vehicular turning movement volume counts and shall also be supplied as separate figures, unless otherwise stated. Pedestrian counts shall be tabulated on the approach they cross.

- b. Special studies including, but not limited to, vehicle classification studies and peak hour delay studies. The State and Firm will negotiate fees for each case separately.
- I.A.2 The Firm shall compile a site sketch and inventory of the location to include, but not limited to, the following:
- a. Count number, Firm's name and contact information (telephone number, etc.), responsible employee's name, counter name(s), data processor name(s), and count dates, times, and weather conditions,
 - b. NCDOT division, county name, city name (if applicable), orientation of location, and directional north,
 - c. Identification of approaches by primary (I, US, NC) or secondary (SR) route number(s) and local street name(s),
 - d. Number of lanes and lane movement designations (left, through, right, or combination) for all approaches, and skew angle (if applicable),
 - e. Posted and advisory speed limits on each approach leg (if applicable),
 - f. Digital pictures of all approaches of the location,
 - g. Presence of area lighting and traffic control devices (such as traffic signals, flashers, or stop signs) and their locations (if a traffic signal is present, the inventory number from the signal cabinet must be recorded, if available),
 - h. A description and address of any landmarks, intersections, land use, development, and businesses adjacent to, and in close proximity with, the location,
 - i. The presence of highway construction activities involving narrowing or closure of travel lanes at or within a ¼ mile radius of the location, and
 - j. A description and time of occurrence of motor vehicle crashes or any traffic congestion and obvious causes (such as short traffic signal phases, lack of signal progression, or signal malfunction).
- I.A.3 The Firm shall supply collected data, as defined above, to the State as follows:
- a. Five (5) hard copies in a format approved by the State.
 - b. A machine-readable copy shall be electronically mailed (e-mailed) in a format approved by the State. The Firm will be responsible for ensuring that traffic data submittals to the State are in a format compatible with the State's analysis software at no cost to the State.
 - c. Digital photos shall be electronically mailed (e-mailed).

I.B General Conditions Regarding the Work

I.B.1 Work Standards

- a. Turning movement volume count data shall be collected with electronic count boards.
- b. The work shall be performed to current procedures consistent with the requirements found in the latest versions of the *Manual of Uniform Traffic Control Devices* (MUTCD) and the *Highway Capacity Manual (Special Report 209)*.
- c. All original calculations, field notes, drawings, and any other necessary project information prepared under this Agreement shall be the property of the State and shall be turned over to the State upon completion of the work.

I.B.2 Locations, Configurations, and Approaches

- a. Traffic data collection shall be made in **all of the fourteen (14) highway divisions of the State. (NOTE – CHANGE THIS TO SPECIFIC DIVISIONS IF A FIRM IS PROVIDING REGIONAL COVERAGE ONLY)**
- b. The Firm shall count all turning movements to and from all approaches of the location (including driveways that act as an approach).
- c. If the complexity or configuration of the location (e.g. five-leg, offset or skew, obstructed views, active railroad tracks, etc.) requires additional personnel to perform the count, the Firm shall obtain approval from the State prior to performing the work.
- d. Data collected at locations with an estimated combined entering volume (all approaches) below 25,000 vehicles per day (VPD) will be considered one-person counts. Data collected at locations with an estimated combined entering volume (all approaches) of 25,000 VPD or greater but less than 50,000 VPD will be considered two-person counts. Data collected at locations with an estimated combined entering volume (all approaches) of 50,000 VPD or greater will be considered special studies.
- e. If requested to collect data when schools are in session, the Firm will be responsible for contacting the appropriate schools (public, private, traditional, year-round, colleges, universities, day cares, etc.) to verify that the schools will actually be in regular session (not delayed openings, early release days, teacher workdays, etc.). The Firm will be responsible for contacting the State for further instructions if school closure affects requested deadlines.
- f. The Firm shall notify any affected schools of the date, time, and location of traffic data collection prior to conducting the actual work.
- g. The Firm shall notify appropriate law enforcement agencies (Highway Patrol, Police, Sheriff, University, etc.) of the date, time, and location of traffic data collection prior to conducting the actual work.

I.B.3 Firm Personnel and Vehicles

- a. The Firm's traffic data collectors should be equipped with cellular telephones to facilitate resolution of potential problems regarding the work such as, but not limited to, crashes, congestion, and traffic signal malfunctions.
- b. Each traffic data collector vehicle at a location shall be equipped with signs identifying and displaying the name and telephone number of the Firm.

I.C Subcontracts

- a. The Firm shall not sublet any portion of the work covered by this Agreement without prior written approval by the State.
- b. The Firm shall be responsible for the schedule of any work sublet to others so as to assure that the overall schedule of the projects are maintained.
- c. The Firm shall be responsible for the completeness, accuracy, presentation, and review of any work sublet to others.

ARTICLE II – TIME OF BEGINNING AND COMPLETION

II.A Requests and Deadlines

- a. Each request for data collection received by the Firm from the State shall be considered a notice to proceed, and all requests to the Firm will be coordinated and submitted by the State.
- b. For the duration of this Agreement, the collection of traffic data shall begin immediately following written notice to proceed for any particular request.
- c. Data collection often requires short turnaround times (one to two weeks), and deadlines will be specified when a data collection request is made. Some requests for work may also be required on specific days or dates.
- d. Reasonable extensions of the scheduled time frame or deadline shall be mutually agreed upon by both parties in the event of unavoidable delays or interference with the usual or normal traffic pattern of the location.

II.B Length and Cancellation of Contract

- a. The contract period for this Agreement shall be for a period of two (2) years.
- b. Failure on the part of the Firm to consistently meet deadlines shall be cause for the State to cancel this agreement.
- c. Failure on the part of the Firm to consistently provide accurate submittals shall be cause for the State to cancel this agreement.

- d. At any time during the total contract period, either party (the State or the Firm) may cancel this contract for any reason with 30 days advance written notice.

ARTICLE III - COMPENSATION AND PAYMENTS

III.A Invoices, Fees, and Payment

- a. The Firm shall submit an invoice to the State on a monthly basis stating the number, location, and type of traffic data collections completed. Each invoice will have a unique number and will list the individual count numbers, division, and cost.
- b. The State, upon verification and processing of the Firm's invoice, will make payment to the Firm.
- c. Lump sum unit cost per count shall be used as a basis for payment. The schedule of lump sum unit costs is shown in Section III.B by type, and location of traffic data collection. Payment of these lump sum unit costs are full compensation for all work including salaries, direct costs, overhead, profit, and cost of capital (if applicable).
- d. No retainage will be withheld for services performed in accordance with this Agreement.
- e. The maximum total fee payable to the Firm for work performed under this agreement shall not exceed \$000,000.

III.B Lump Sum Unit Costs

| Division | 16-Hour Count | | 12-Hour Count | | 8-Hour Count | |
|----------|---------------|----------|---------------|----------|--------------|----------|
| | 1-Person | 2-Person | 1-Person | 2-Person | 1-Person | 2-Person |
| 1 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 2 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 3 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 4 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 5 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 6 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 7 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 8 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 9 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 10 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 11 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 12 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 13 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 14 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

III.C Fees for Special Studies

- a. Special studies shall be authorized based upon a negotiated fee with established personnel rates for counters and supervisors.

- b. Expenses for travel and subsistence for special studies shall be in accordance with State regulations. For each special study, when requested, the Firm shall provide a lump sum price based upon man-hours by personnel type plus direct expenses.

III.D Subconsultants

- a. The Firm shall pay subconsultants for work performed within 7 days after the Firm receives payment from the State for work performed by the subconsultant. This requirement must be incorporated into all subconsultant agreements. Failure to comply with the 7-day requirement may cause the State to withhold payments to the Firm and the State may suspend work until the subconsultant is paid or remove the Firm from the list of prequalified Firms.
- b. It shall be the responsibility of the Firm and all subconsultants to keep records of all payments requested and the dates received. The State may request copies of this information in form of a report.

III.E Maintenance of Information and Reports

III.E.1 – FHWA Information

- a. All work shall be administered and performed in accordance with the *Federal Aid Policy Guide (FAPG)-23CFR172*, and the North Carolina Administrative Code.
- b. Subcontracts exceeding \$2,500 which involve the employment of mechanics or laborers shall require the subcontractor to comply with Sections 103 and 107 of the “Contract Work Hours and Safety Standards Act” (40 USC 327-330) as supplemented by State of Labor regulations (29 CFR, Part 5).
- c. Subcontracts exceeding \$10,000 shall require the subcontractor to comply with all Federal regulations required in the prime contract.

III.E.2 – Availability of Information

- a. The Firm shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred on this project and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of final payment for inspection by the State, the Federal Highway Administration, or any authorized representative of the State of the Federal Highway Administration. Copies thereof shall be furnished to the State and/or the Federal Highway Administration, if requested. The Firm shall use cost principles as described in *Federal Acquisition Regulation* (48 CFR 1-31), Subpart 1-31.2.
- b. The Firm shall require all subcontractors to whom a portion of this contract may be sublet to maintain all such books, documents, papers, accounting records, and other information pertaining to cost, and further to require that said subcontractors make these materials available to the State and/or the Federal Highway Administration at

all reasonable times during the contract period and for three (3) years from the date of final payment, and to require said subcontractors to furnish copies of such documents to the State and/or the Federal Highway Administration upon request. The Firm shall affirmatively enforce this provision of this contract with the subcontractor upon request of the State or Federal Highway Administration.

- c. The Firm shall notify the State of significant changes within the firm (e.g., change of address, telephone number, project-related personnel changes, etc.). This responsibility includes ensuring the Firm's qualification paperwork and registration information is current in the State's files.

III.E.3 – Reporting Disadvantaged Business Enterprise Participation

- a. When payments are made to Disadvantaged Business Enterprise firms, the Firm shall keep records accounting for the said payments. If the Firm is a DBE, a monthly statement in the format below may be required showing amount of payment received, exclusive of payments made to non-DBE subconsultants. This accounting shall be furnished the State for any given month by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next partial payment; or (2) removal of the Firm from the prequalified list. The accounting shall list for each payment made to a Disadvantaged Business Enterprise firm the following:
 - Date of Report (for month of _____)
 - NCDOT Project Number, TIP Number and Contract Number
 - Payee Name
 - Receiving DBE Subconsultant
 - DBE Certification Basis, e.g., Woman-Owned, Native American, African American, etc.
 - Amount of Payment
 - Date of Payment
- b. A responsible fiscal officer of the Firm who can attest to the date and amounts of the payments shall certify that the accounting is correct. A copy of an acceptable report may be obtained from the State.

ARTICLE IV – DATA AND SERVICES TO BE FURNISHED BY THE STATE

Requests from the State shall be in writing, shall illustrate the location on a map, and shall describe the location, type, duration, and estimated annual average daily traffic (AADT) of each of the traffic data collection.

The State shall provide an introductory letter to each of the Firm's personnel on this project indicating that the Firm's representatives are acting as agents of the State while collecting data. Firm representatives shall keep this introductory letter with them at all times while collecting data.

ARTICLE V - MISCELLANEOUS PROVISIONS

V.A Conferences, Visits to Site, Inspection of Work

The Firm shall be represented by a responsible member of the firm and will be responsible for the presentation of their work at any meetings, hearings, consultations, and field conferences as requested by the State. All conferences held shall be in the vicinity of the project or at a site designated by the State, and shall be subject to additional compensation, as authorized by the State, should the maximum fee for the count be exceeded.

V.B Relationship with Others

- a. The Firm shall cooperate fully with the State's other Firms on this project, adjacent projects, municipalities, local government officials, and others as may be directed by the State. This shall include attendance at meetings, discussions, and hearings and provision of information to all parties as may be requested by the State.
- b. It is the responsibility of the Firm to keep all parties involved informed and to notify them if revisions are made.
- c. Any revisions to the collected data shall be provided to the State. If failure to do so results in incorrect designs in plans prepared by others, the Firm shall be fully liable for all claims against the State including redesign costs and the cost of other corrective measures as determined to be necessary by the State. It is the Firm's responsibility to keep records of all contacts providing collected data to others and submittals of revised collected data to others involved in affected projects.

V.C Firm Responsibility and Work

- a. The Firm shall be fully and totally responsible for the accuracy and completeness of all work performed by them and their subconsultants under this contract and shall save the State harmless and shall be fully liable for any additional costs and all claims against the State which may arise due to errors, omissions, or negligence of the Firm in performing the work.
- b. If, during the duration of this Agreement, the Firm receives instructions or directions, which are considered beyond the scope of work outlined in this Agreement or referenced attachments, all work shall be terminated until the matter is resolved. The Firm shall immediately notify the State in writing with a description and justification for the claim of extra work. The Firm shall not continue work until written notice to proceed is given.

V.D Covenant Against Contingent Fees

The Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Firm, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee

working solely for the Firm, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the State shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

V.E Design

Unless covered elsewhere in this Agreement, design standards are to be as furnished by the State.

V.F Ownership of Documents

All tracings, plans, specifications, photographic negatives, basic survey notes, computations, and maps prepared or obtained under the terms of the contract shall be delivered to and become the property of the State, and that basic sketches, charts, and other data prepared or obtained under this contract shall be made available, upon request, to the State without restriction or limitation on their use; however, such documents are not intended or represented by the Firm to be suitable for reuse on extensions or modifications of the project or on any other project. In the event such modifications or reuse of the documents are made the State shall assume the liability for such modifications or reuse. In the case of an agreement involving preliminary plans only, no commitment is stated or implied that would constitute a limitation on the subsequent use of the plans or ideas incorporated therein for preparation of construction plans.

V.G Changes in Work

All changes in the work are to be included in supplemental agreements, which are to be executed prior to beginning of such supplemental work. The supplemental work must be approved by the State prior to doing the work.

V.H Delays and Extensions

Reasonable extension of time for unforeseen delays may be made by mutual consent of all parties involved.

V.I Termination or Abandonment

Should the State for any reason whatsoever decide to cancel or to terminate the use of the Firm' services, it will furnish thirty (30) days written notice thereof to the Firm who will immediately terminate work, but shall bring to a reasonable stage of completion those items whose value would be otherwise lost without such necessary further work, as may be directed by the State, and will turn over to the State all data, charts, survey notes, figures, drawings, and other records or information collected or secured herein, whether partial or complete. Upon such termination the fee to be paid the Firm will be equitable to cover all services rendered, using a proportional amount of the total fee based on a ratio of the

amount of work done to the total amount of work which was to have been performed, less prior partial payments which have been made.

V.J Disputes

In the event of failure of agreement by both parties on the preceding circumstances, then the decision of the State Highway Administrator as to what is fair and equitable compensation shall be final. In any dispute concerning a question or fact in connection with the work on this Agreement or compensation thereof, the decision of the State Highway Administrator in the matter shall be final and conclusive for both parties.

V.K Responsibility for Claims and Liability

The Firm shall indemnify and save harmless the State for claims and liabilities resulting from negligence, errors or omissions of the Firm or any of the Firm's Subcontractors.

V.L General Compliance with Laws

The Firm shall comply with all laws, ordinances and regulations, Federal, State, and Local, applicable to the work. Specific attention is directed to North Carolina General Statutes 14-100 (Obtaining Property by False Pretenses) and 136-13.2. (Falsifying Highway Inspection Reports).

V.L.1 – Selection of Labor

During the performance of this Agreement, the Firm shall not discriminate against labor from any other State, possession or territory of the United States.

V.L.2 – Employment Practices

During the performance of this Agreement, the Firm agrees to comply with all applicable provisions of 49 CFR 21 through Appendix H and 23 CFR 710.405 (b) and the Civil Rights Act of 1964 as amended, and agree as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap and/or disability. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin, sex, age, handicap and/or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this nondiscrimination clause.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive consideration for

employment without regard to race, creed, color, national origin, sex, age, handicap and/or disability.

- c. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State, advising the labor union or workers' representative of the Firm' commitments under this Section I-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Firm will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in State of Labor regulations (41 CFR Part 60).
- e. The Firm will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in State of Labor regulations (41 CFR Part 60), and will permit access to his books, records, and accounts by the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.
- f. In the event of the Firm' noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or Federally-assisted construction Agreements in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in State of Labor regulations (41 CFR Part 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned Executive Order and regulations or as otherwise provided by Law.
- g. The Firm will include the provisions of this Section I-2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

V.L.3 – Selection of Subcontractors, Procurements of Materials, and Leasing of Equipment

During the performance of this Agreement, the Firm, for itself, its assignees, and successors in interest (herein referred to as the "Firm") agrees as follows:

- a. Compliance with Regulations: The Firm will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710.405 (b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

- b. Nondiscrimination: The Firm with regard to the work performed by them after award and prior to completion of the Agreement work, will not discriminate on the ground of race, creed, color, or national origin, sex, age, handicap and/or disability in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Firm will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations. The Firm and their subconsultants shall not discriminate on the basis of race, color, national origin, sex, age, handicap and/or disability in the performance of this contract. The Firm shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Firm to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the State deems appropriate.
- c. Solicitations: In all solicitations either by competitive bidding or negotiation made by the Firm for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the Firm of the Firm's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, creed, color, national origin, sex, age, handicap and/or disability.
- d. Information and Reports: The Firm will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, account, other sources of information, and its facilities as may be determined by the State to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a Firm or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Firm shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the Firm's or Contractor's noncompliance with the nondiscrimination provisions of this Section I-3, the State shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - 1.) withholding of payments to the Firm under the Agreement until the Firm complies, and/or
 - 2.) cancellation, termination or suspension of the Agreement in whole or in part.
- f. Incorporation of Provisions: The Firm will include the provisions of Section I-3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Firm will take such action with respect to any subcontract, procurement or leases as the State may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Firm become involved in, or is threatened with litigation with a subcontractor, or lessor as a result of such direction, the Firm may request the State to enter into such litigation to protect the interests of the

State, and in addition, the Firm may request the United States to enter into such litigation to protect the interests of the United States.

- g. For contracts and subcontracts of amounts in excess of \$100,000 the Firm shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The Firm shall report violations to the grantor agency and to the U.S.E.P.A. Assistant Administrator for Enforcement (EN-329).

V.M Subletting, Assignment, or Transfer

There shall be no assignment, subletting or transfer of the interest of the Firm in any of the work covered by the Agreement without the written consent of the State, except that the Firm may, with prior notification of such action to the State, sublet property searches and related services without further approval of the State.

V.N Firm Certification of Plans, Etc.

Certification of traffic data collected for this project is not required.

V.O Control of Work

All work by the Firm is to be done in a manner satisfactory to the State and in accordance with the established customs, practices, and procedures of the North Carolina Department of Transportation and in conformity with the standards adopted by the American Association of State Highway Transportation Officials, and approved by the Secretary of Transportation as provided in Title 23, US. Code, Section 109 (b). The decision of the State is to control in all questions regarding location, type of design, dimension of design, and similar questions.

V.P Approval of Personnel

The State shall have the right to approve or reject the project engineer and other supervisory personnel, assigned to a project. The Firm or any subcontractor for the Firm which are employed to provide engineering or any other services to the State shall not discuss employment opportunities or engage the services of any person or persons, now in the employment of the State during the time of this Agreement, without written consent of the State.

In the event of engagement, the Firm or their subcontractors shall restrict such person or persons from working on any of the Firm' contracted projects in which the person or persons were formerly involved while employed by the State. This restriction period shall be for the duration of the contracted project with which the person or persons was involved. "Involvement" shall be defined as active participation in any of the following activities:

- Drafting the contract;
- Defining the scope of the contract;
- Selection of the Firm for services;
- Negotiation of the cost of the contract (including calculating man-hours or fees); and
- Administration of the contract.

An exception to these terms may be granted when recommended by the Secretary and approved by the Board of Transportation.

Failure to comply with the terms stated above in this section shall be grounds for termination of this contract and/or not being considered for selection of work on future contracts for a period of one year.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

EXECUTED by the State this _____ day of _____, 20 _____.

By _____
State Traffic Engineer

RECOMMENDED FOR APPROVAL:

By _____
State Traffic Safety Engineer

EXECUTED BY the Firm this _____ day of _____, 20 _____.

SEAL

By _____

ATTEST:

Certification of the North Carolina Department of Transportation

I hereby certify that I am the State Traffic Engineer of the Division of Highways of the Department of Transportation of the State of North Carolina, and that the above Firm or his representative has not been required, directly or indirectly, as an expressed or implied condition in connection with obtaining or carrying out this agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

except as here expressly stated (if any).

I acknowledge that this Certificate is to be furnished to the Federal Highway Administration, United States Department of Transportation, in connection with this agreement involving participation of Federal aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Date

State Traffic Engineer

Certification of the Firm

_____, being duly sworn, certify that I am the _____ and duly authorized representative of the firm of **FIRM NAME**, whose principal offices are located at **ADDRESS, CITY, STATE, ZIP**, and that neither I nor the above firm I represent or any of its principals:

- (a) has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above firm) to solicit or secure this agreement; or
- (b) has agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; or
- (c) has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above firm) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out the agreement;
- (d) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal State or agency;

- (e) has within a three-year period preceding this agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- (f) is presently indicted for or otherwise criminally or civilly charged by governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph e. of this certification; and
- (g) has within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

except as here expressly stated (if any):

I further certify that this certification is executed according to Appendix A, which is also a part of this agreement, and that if further certifications are required of subcontractors and suppliers, under 49 CFR Part 29 and 19A NCAC 0.702(g), I shall obtain them.

I acknowledge that this certificate is to be furnished to the North Carolina Department of Transportation and is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature

Subscribed and sworn to before me this the _____ day of _____, 20_____.

Notary

My Commission Expires: _____

APPENDIX A
Certification Regarding Debarment, Suspension, and Other Responsibility Matters:
Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this agreement, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the State or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the State or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the State or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the State or agency to whom this agreement is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction", "principal," "agreement," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12540. You may contact the State or agency to which this agreement is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the State or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the State or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel #).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the State or agency may terminate this transaction for cause of default.